

Before the
New Hampshire Board of Medicine
Concord, N.H. 03301

In the Matter of:

Linda Mattson, P.T. II
(Misconduct Allegations)

Docket No. 96-001

DECISION AND ORDER

By: Cynthia S. Cooper, M.D., *Vice President*; Lawrence Friedman, M.D., Wassfy M. Hanna, M.D., Maureen P. Knepp, PA-C, Raymond E. Merrill, M.D., and Paul F. Racicot, M.D., *Board Members*.

Appearances: Francis X. Quinn, Jr., Esq., *for Respondent*
Dahlia George, Esq., *as Hearing Counsel*

This proceeding was commenced on April 4, 1996 to determine whether Linda Mattson, PT II ("Ms. Mattson" or "the Respondent") diverted to her own use controlled drugs prescribed for physical therapy patients under her care, and thereby engaged in malpractice or gross misconduct within the meaning of RSA 328-A:8 and section Med 808.01 of the Board's rules, or whether she was mentally or professionally unfit within the meaning of the same statute and rule.

A hearing was held before a single board member (Lawrence W. O'Connell, Ph.D.) on June 27, 1996, and on August 26, 1996 Dr. O'Connell served a recommended decision pursuant to Med 207.04 in which he found that professional misconduct had occurred and recommended license revocation as a sanction.

Exceptions and a request for oral argument were filed by the Respondent on September 20, 1996. The Respondent also moved to reopen the record. Oral argument was held before the Board on November 6, 1996.

After reviewing the record below and the Respondent's Exceptions, and considering the argument of the parties, the Board has decided to adopt the recommended decision, as modified below. Specific rulings on the Respondent's Exceptions are appended to this Decision and Order.

The Board modifies the recommended decision by finding that Mark Gallagher performed only a consultative examination of the Respondent, and that she pleaded guilty to only one misdemeanor offense, although she had been charged with at least one other offense.

The Board does not find that the Frisbie Hospital Prospects program itself is "inadequate or insufficient," and does not interpret the recommended decision as containing such a finding. The Board merely finds that the Respondent's participation in this program since April 1996 is insufficient to establish that she has been rehabilitated to such an extent the Board can depend upon her not to again engage in misconduct.

The Respondent testified that her patients were "between 45 and 85 years old" and that most of them were "65ish" Tr. at 20. Mr. and Mrs. Hartford were in their "young 70's;" Ms. Poulin was "62 or 64." Tr. at 37-38. Most importantly, most of these patients were home-bound or bed-ridden, or otherwise dependent upon visiting

nurse services. For the Respondent to claim that the record contains no evidence upon which the Board could find that these patients were "elderly" or that they were "harmed" by the theft of their medications is itself a strong indicator that she cannot be depended upon to put her interests before the legitimate medical needs of her patients and to otherwise meet the standards of conduct required by the Physical Therapy Practice Act and the Board's rules.

A person who steals from patients engages in gross misconduct within the meaning of RSA 328:A-8 and lacks the professional character to be licensed, regardless of his or her technical proficiency in treating patients.

The harm experienced by the Respondents' patients may not have been medical or physical in nature, but there is no question that they suffered a loss. Quantifying the exact amount of that loss is irrelevant, and, as revealed by the present record, is something which could only be done by the Respondent. She was, however, either unable or willing to respond to the Board's requests for this information. *E.g.*, Tr. at 28.

Nor is proof of specific "damages" necessary to support a disciplinary action based upon negligent conduct. The Board is not charged with awarding money damages to patients who have suffered from the "malpractice" of a physical therapist or the "negligence" of a physician (see RSA 328:A:8 and RSA 329:17, II(d)). The common law elements of negligence are not controlling in the context of the licensing statutes where public protection is the sole

objective to be achieved. If the licensee's breach of duty would be expected to be a proximate cause of harm in most instances, or if the breach of duty created an undue risk of harm, then disciplinary action can be taken.

The sanction proposed by the recommended decision is reasonable and appropriate for the repeated dishonest conduct involved in this case. When a licensee engages in theft or other patient abuse, he or she should expect such a sanction. If a licensee disputes the fact of whether such conduct occurred, he or she should, by all means, exercise his or her right to a hearing. But, if facts establishing patient abuse are not disputed, licensee should not expect the Board to settle the case on terms more favorable than voluntary license surrender.

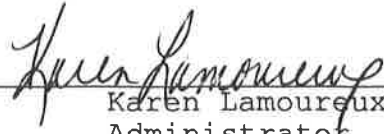
During oral argument, the Respondent claimed that the Board erred in not allowing her to reopen the record to submit evidence of her rehabilitation efforts since July 22, 1996, and "moved" for reconsideration of the Board's October 3, 1996 order denying such relief. This "motion" has been treated as a late filed exception, and is denied.

THEREFORE, it is ordered, that the August 26, 1996 recommended decision, as modified above, is adopted as the decision of the Board in this proceeding; and

IT IS FURTHER ORDERED, that the physical therapist license of Linda Mattson is revoked as of the date shown below.

BY ORDER OF THE BOARD*/

Dated: December 6, 1996



Karen Lamoureux
Administrator

*/ Lawrence W. O'Connell, Ph.D., *President*, not participating.

APPENDIX TO DECISION AND ORDER

DOCKET NO. 96-1

RULINGS ON EXCEPTIONS

I. Respondent's Exceptions

- 1.a. Granted.
- 1.b. Denied.
- 1.c. Denied.
- 1.d. Granted.
- 1.e. Denied.
- 1.f. Denied.

- 2.a. Denied.
- 2.b. Denied.
- 2.c. Denied.
- 2.d. Denied.
- 2.e. Denied.
- 2.f. Denied.
- 2.g. Denied.
- 2.h. Denied.
- 2.i. Denied.
- 2.j. Denied.
- 2.k. Denied.
- 2.l. Denied.
- 2.m. Denied.

- 2.n. To the extent the Respondent contends that her proposed conclusions of law nos. 4 and 5, are actually requests for findings of fact, the Board notes that the facts recited therein are essentially correct. These facts do not, however, legally compel a different result in this case than that reached by the recommended decision, and the exception is denied.